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7 BRANDEN ROBINSON,
8 Plaintiff,
9 v.
10 A. JACKSON,
11 Defendant.

Case No. [18-cv-06814-HSG](#)

**ORDER DENYING REQUEST FOR
DEFAULT JUDGMENT; SUA SPONTE
GRANTING PLAINTIFF AN
EXTENSION OF TIME TO OPPOSE
SUMMARY JUDGMENT MOTION**

Re: Dkt. No. 32

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13 Plaintiff, an inmate at California State Prison – Solano, filed this *pro se* civil rights action
14 under 42 U.S.C. § 1983 alleging that Alameda County deputy Jackson used excessive force on
15 him when he was previously housed as a pretrial detainee at Santa Rita County Jail. Plaintiff
16 states that default has been entered against defendant Jackson for failure to appear¹ and requests
17 that the Court enter default judgment against defendant Jackson. Dkt. No. 32.

18 On January 30, 2019, the Court issued a summons to defendant Jackson. Dkt. No. 12. On
19 February 5, 2019, the Court received the executed summons, indicating that defendant W.A.
20 Cohen had been served on February 4, 2019. Dkt. No. 15. On April 23, 2019, defendant Jackson,
21 represented by counsel, appeared in this case by filing a motion requesting an extension of time to
22 file his dispositive motion. Dkt. No. 17. The Court granted this extension of time, and later
23 granted a second extension of time. Dkt. Nos. 18, 23. On August 27, 2019, defendant Jackson
24 filed the summary judgment motion that is now pending before the Court. Dkt. No. 24. On
25 January 22, 2020, after the pending request for default judgment was filed, defendant Jackson filed
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28 ¹ The Court presumes that plaintiff's allegation that defendant Jackson failed to "appeal" (Dkt. No. 32 at 2) was a typographical error and that plaintiff seeks default judgment based on defendant Jackson's alleged failure to appear.

1 a waiver of reply pursuant to 42 U.S.C. § 1997(e), stating that because the Court's January 29,
2 2019 Order of Service did not require defendant Jackson to file a reply or answer, defendant
3 Jackson instead complied with the dispositive motion deadline set forth in the order. Dkt. No. 33.

4 Entry of default generally establishes a defendant's liability. The Court has the discretion
5 to deny entry of default judgment. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). At the
6 present time, defendant Jackson has appeared and has filed a waiver of reply. Plaintiff has failed
7 to demonstrate any prejudice from defendant Jackson's late filing of his waiver of reply. *See Eitel*
8 *v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986) (setting forth factors to be considered in
9 exercising discretion to enter default judgment); *see also Lau Ah Yew v. Dulles*, 236 F.2d 415, 416
10 (9th Cir. 1956) (upholding denial of motion for entry of default judgment where answer was not
11 timely). Because plaintiff does not explain how he was prejudiced because of defendant Jackson's
12 delay in responding, and because the Court recognizes the policy that "[c]ases should be decided
13 upon their merits whenever reasonably possible," plaintiff's request for the entry of a default
14 judgment is DENIED. *Eitel*, 782 F.2d at 1472.

15 The Court notes that plaintiff has not filed his opposition to the pending summary
16 judgment motion, and the deadline to do so has passed. The Court has granted plaintiff two
17 extensions of time to January 7, 2020 to file his opposition. Dkt Nos. 28, 30. The Court will *sua*
18 *sponte* grant plaintiff an extension of time to February 7, 2020 to file his opposition. No further
19 extensions of time will be granted to plaintiff without a showing of good cause.

20 This order terminates Dkt. No. 32.

21 **IT IS SO ORDERED.**

22 Dated: 2/3/2020

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24 HAYWOOD S. GILLIAM, JR.
United States District Judge